First Nations Water Rights in British Columbia

A Historical Summary of the rights of the Kwakiutl First Nation

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WATER MANAGEMENT BRANCH

FIRST NATIONS WATER RIGHTS IN BRITISH COLUMBIA:

A Historical Summary of the rights of the Kwakiutl First Nation

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Gary Robinson
Project Manager
Water Management Branch

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TAB NO.

1 TABLE: Summary of Water Records for the Kwakiutl Band

2 RECORD OF MINUTES OF DECISIONS
AGBC No. 590456.

3 COPY OF SUMMARY OF WATER PROTECTION RECORDS FOR FIRST NATIONS.

4 MAP: Kwakiutl Band
- two 1:50,000 map showing all the Kwakiutl Band Reserves.
- one 1:250,000 map showing all the Kwakiutl Band Reserves.

FIRST NATIONS WATER RIGHTS REPORT

BAND: Kwakiutl Band

ADDRESS: P.O. Box 1440, Port Hardy, B.C., V0N 2P0

CHIEF: Chief David Hunt

PHONE: 949-6012 **FAX:** 949-6066

AFFILIATION: Kwakiutl District Council

LOCATION:

The Kwakiutl Band occupy 295.4 hectares in land in the Port Hardy District Municipality. The land is divided between eight reserves. The reserves' are known as:

Fort Rupert 1	Keogh 6	Kippase 2
Klickseewy 7	Malcolm Island 8	Shell Island 3
Thomas Point 5	Thomas Point 5A	

Of the 8 reserves, there are records of water allocations existing for Fort Rupert Reserve No. 1 only. Fort Rupert Reserve No.1 is situated on the shores of Beaver Harbor, east of Kippase 2.

The most recent population figures compiled by the Ministry of Finance report that the Kwakiutl Band has 280 persons living on-reserve, and 652 persons living off-reserve. Their total registered population is reported as 537.

The eight reserves of the Kwakiutl Band are classified as occurring in the Coastal Western Hemlock Biogeoclimatic Zone. The reserves occur at elevations ranging from sea level to 200 feet above mean sea level, and experience a climate in which average daily temperatures range from lows in the order of -5 degrees centigrade in January to highs of less than 16 degrees centigrade in July. Average annual rainfall for the area totals between 100 and 250 centimetres.

WATER ALLOCATIONS:

There are no records of any allocations made by either the Lieutenant Governor-in-Council (by Order-in-Council), the Board of Investigation, or by the granting of water licenses in response to Federal Government applications. No actions to amend, cancel or record as abandoned licensed rights, pursuant to provisions in the *Water Act*, have occurred with respect to the Kwakiutl Band.

The water rights of the Band have been determined by only one action of government:

1) Allotments by Indian Reserve Commissioners.

   Following confederation, the Province and the Dominion established an Indian Reserve Commission to reserve lands for the Indians and to facilitate the transfer of those lands to the Dominion. In setting apart lands for reserves, the Reserve Commissioners made it their practice to allot water with the lands. It is understood that this practice was unique among Indian Reserves in Canada and the authority of these Commissioners to allot water rights has always been disputed by the Province.

HISTORY, CURRENT STATUS AND NOTES:

The history of water rights, the current status of rights, and notes for the Kwakiutl Band with respect to an unnamed stream are as follows:

FORT RUPERT 1

History:

July 27, 1880 A Minute of Decision of the Indian Reserve Commission allocated the following for the use of the Kwakiutl Band on Fort Rupert 1:

> *"The Indians to have prior right to all water required for household or other purposes from the stream flowing through the Fort Kilc? gardens. Also in the well upon the piece of land known as the R.C. Mission claim."*

The location and water source described in this Minute of Decision, in relation to the present area, is unclear. No conclusions regarding the intended source can be made.

Notes:

1. The Kwakiutl Band's prior right to water allotted by the Indian Reserve Commission has not been formally recognized by the Province. It may be difficult to implement the allocation as it was intended by the Commission, as the source and location of the water in relation to present conditions, is not clear.

OTHER INFORMATION:

Groundwater Records:

A review of well records maintained by the MELP - Groundwater Section found that no wells have been reported on any of the Kwakiutl reserves.

As provision of well information to the Groundwater Section is voluntary this review should not be assumed to be complete.

Alternate Water Sources:

Reports on the water consumption in 1995 indicate that the District of Port Hardy experienced a peak daily demand in excess of 295,266,000 imperial gallons, which is within their licensed maximum daily allowance for waterworks.

Water Protection Records:

Water Protection Section records indicate that bank improvement work exists along .09 kilometres of Beaver Harbor, within Fort Rupert Reserve No. 1. The records state that all banks protection works are maintained by the Band.

Summary of Water Records Kwakiutl Band								
Water Source	**Priority Date**	**Reserve Name**	**File No.**	**Document Type**	**Status**	**Superceded By**	**Licence PUC/MOD & OIC Allotments**	**Comments**
Unnamed stream	1880/07/27	Fort Rupert 1		MOD			*"All water required for household or other purposes from the stream flowing through Fort Kilc(?) garden".* (AGBC #590456)	Water Source: The unnamed stream as described *cannot be located* . Water Allocations: Those made by the **Indian Reserve Commission** NOT formally recognized by Province.
Beaver Harbour	Unknown	Fort Rupert 1		Water Protection Records: Summary Sheet	Current			Water Protection Section Summary Records: **Bank improvement** work on 0.9 km stretch of beach interface on Fort Rupert 1 Reserve lands; all works are **maintained by the Band.**

LEGEND:

License Types (Document Types)
CL: Conditional License
FL: Final License
Z: Application

Mechanisms for Allocation (Document Type)
OIC: Order-in-Council (as issued by the Lieutenant Governor in Council)
MOD: Minute of Decision (as recorded under the Indian Reserve Commission)
IRC: Indian Reserve Commission
AGBC: Attorney Generals Office of BC (followed by File #)

Allotment Units
GAD: Gallons a day
AF: Acre feet
CFS: Cubic feet per second

Kwah. Reserve Indian

Fort Rupert.

A Reserve beside the Hudsons Bay Co Fort in Beaver Harbour to be bounded as follows.

From a spot on the shore about 650 links east from the most north post of the Hudsons Bay Co pre-emption claim dated Jan 16. 1863 - thence 60 chains in a Southerly direction along the east boundary of the piece of ground known as the R.C. Mission claim. thence at right angles about 1150 links more or less to west boundary fence of Hudsons Bay Co garden. thence

2nd July 1883

for Planing

following boundaries of said garden
(crossing stream) & about the north
west corner of the Fort - thence in
a northerly direction to the stone
following the west boundary of the
fort frontage - thence along shore in
a westerly direction to starting point -

The Indians to have
prior right to all water required for
household or other purposes from the
stream flowing through the Fort Kilala
garden - Also in the well upon the
piece of land known as the H.C. business
claim -

A REF. NO.	B RESERVE NAME & NO.	C BAND NAME	D WATER BODY	E TYPE OF WORKS	F LENGTH DYKE (KM)	G LENGTH B.P. (KM)	H CROWN WDTH. (M)	I APPROX. WATER SLOPE	J PROT'D. AREA (HA)	K DATE LAST CONST'D.	L CONST. FUNDED BY	M INSP-ECTED BY	N MAINTAINED BY
1	ASHNOLA 10	LOWER SIMILKAMEEN	SIMILKAMEEN R.	DYKE & B.P	0.40	1.20	?	?	60	1926	ARDSA	I.of D.	BAND
2	AIEYUCKS 15	SQUANISH	SQUANISH R.	DYKE	0.80	N/A	3.6	2:1	19	1977	B.C./KVR.	I.of D.	SQUANISH DIST.
3	BARNSTON ISLAND 3	KATZIE	FRASER R.	DYKE	0.07	N/A	3.0	2:1	49.5	1950	FYDB	I.of D.	BRSH. I.D. DIST.
4	BELLA COOLA 1	BELLA COOLA	TNGASEN CR.	DYKE	0.02	0.00	4.0	2:1	?	1988	BAND	?	BAND
5	BELLA COOLA 1	BELLA COOLA	TASTSQUAN CR.	DYKE & B.P	0.15	0.10	?	?	?	19..	BAND	?	BAND
6	CAPE MUDGE	CAPE MUDGE	SEA	SEAWALL	N/A	?	N/A	?	?	?	?	?	BAND
7	CHAYATHIL	HOPE	FRASER R.	B.P.	N/A	0.50	N/A	?	?	?	CPR	?	CPR
8	CHEAM 1	CHEAM	FRASER R.	DYKE	0.02	0.76	3.6	2.5:1	55.8	1974	FRJP/CNR	I.OF D.	CHILLIWACK DIST.
9	CHEHALIS 5	CHEHALIS	CHEHALIS R.	DYKE	0.44	N/A	4.0	2:1	881	1990	BAND	?	BAND
10	COQUITLAM 2	COQUITLAM	COQUITLAM R.	DYKE	0.90	N/A	?	?	70	?	BAND	?	BAND
11	COWICHAN 1	COWICHAN	COWICHAN/KOKSILAH RS.	DYKE	5.74	N/A	3.0	2:1	650	1985	ARDSA	I.of D.	BAND
12	DEADMAN'S CREEK	SKEETCHESTN	DEADMAN CR.	B.P.	N/A	?	N/A	?	600	1948	BAND	?	BAND
13	EAST SAANICH 2	TSAVOUT	SEA	SEAWALL	N/A	0.40	N/A	1.5:1	?	1989	BAND	?	BAND
14	ENDERBY 2	ENDERBY	SHUSWAP R./FORTUNE CR.	DYKE	?	N/A	?	?	340	?	BAND	?	BAND
15	FORT RUPERT 1	KWAKIUTL	SEA	SEAWALL	N/A	0.03	N/A	1.5:1	340	1974	BAND	?	BAND
16	GITANMAAX 1	GITANMAAX	SKEENA R.	GROYNE	N/A	?	N/A	N/A	?	?	?	?	BAND
17	GORDON RIVER 2	PACHEENAHT	SAN JUAN R.	B.P.	N/A	0.50	N/A	2:1	?	1991*	BAND	?	BAND
18	HALFWAY 168	HALFWAY	HALFWAY R.	B.P.	N/A	0.10	N/A	?	?	1991*	BAND	?	BAND
19	KAMLOOPS	KAMLOOPS	SOUTH THOMPSON R.	DYKE	1.37	N/A	?	?	?	1972	B.C.-KVYS.	?	BAND
20	KATIT 1	OWEEKANO	UNKNOWN	DYKE	?	N/A	?	?	?	1990	BAND	?	BAND
21	KATZIE 1	KATZIE	FRASER R.	DYKE	0.60	N/A	3.6	2.5:1	31.5	1984	FRJP	I.of D.	PITT M'DOWS DIST.
22	KINCOLITH 14	KINCOLITH	NASS R.	CAUSEWAY	N/A	0.20	4.0	1.5:1	?	1990	BAND	?	BAND
23	KITAMAAT 2	KITAMAAT	YATHL R.	DYKE	0.55	N/A	3.5	2:1	18	1988	BAND	?	BAND
24	KITWANGAR 1	GITWANGAX	SKEENA	B.P.	N/A	?	N/A	?	93	?	CNR	?	CNR
25	KITWILLUCHSILT 7	GITWINKSIHLKW	UNNAMED	CHAN. IMPS	N/A	N/A	N/A	N/A	52	1987	BAND	?	BAND
26	KULKAYU 4	HARTLEY BAY	SEA	SEAWALL	N/A	0.22	N/A	1.5:1	?	1977	BAND	?	BAND
27	LACHKALTSAP 9	LAKALZAP	GREENVILLE CR.	DYKE	1.40	N/A	4.0	1.5:1	100	1990	BND/BC	?	BAND
28	LAKAHAHMEN 11	LAKAHMEN	KICOMEN SLOUGH	DYKE	0.90	N/A	?	?	23	1949	FYDB	I.of D.	M.KICOMEN I.DIST.
29	LOUIS CREEK 4	NORTH THOMPSON	N.THOMPSON/LOUIS CR.	B.P.	N/A	?	N/A	?	0.6	1984	BAND	?	BAND
30	MASSET 1	MASSET	SEA	SEAWALL	N/A	0.22	N/A	VERT.	?	1983	BAND	?	BAND
31	MATSQUI MAIN 2	MATSQUI	FRASER R.	DYKE	1.10	N/A	3.6	2.5:1	41.3	1974	FRJP	I.of D.	DIST.OF MATSQUI
32	MCMILLAN ISLAND 16	LANGLEY	FRASER R.	B.P.	N/A	0.46	N/A	?	181	?	BAND	?	BAND
33	MOUNT CURRIE 1,8,8,10	MOUNT CURRIE	BIRKENHEAD	DYKE	0.70	N/A	3.0	2:1	442	PRE-70	?	I.of D.	PEMBERTON D.DIST.
34	MUSQUEAM 2	MUSQUEAM	SEA/M.ARM FRASER R.	DYKE & B.P	0.55	0.40	?	?	27.3	?	BAND	?	BAND
35	NANAIMO RIVER 3	NANAIMO RIVER	NANAIMO R./SEA	DYKE	2.20	N/A	?	?	93	1934	BAND	?	BAND
36	NEQUATQUE 1	ANDERSON LAKE	GATES R./ANDERSON L.	DYKE	?	N/A	?	?	9	1948	MYYS/BCR	?	?
37	NESUCH 3	MOUNT CURRIE	LILLOOET R.	DYKE	0.20	N/A	3.0	2.5:1	235	1987	B.C./B.D.	I.of D.	PEMBERTON D. DIST.
38	NORTH THOMPSON 1	NORTH THOMPSON	NORTH THOMPSON R.	B.P.	N/A	0.40	N/A	?	250	?	BAND	?	BAND
39	PAPERVATONIN 4	LAKAHAHMEN	FRASER R.	DYKE	0.80	N/A	3.6	2.5:1	18.4	1980	FRJP	I.of D.	KICOMEN IS.I.DIST.
40	PENTICTON	PENTICTON	OKANAGAN R/SHINGLE CR.	DYKE	?	N/A	?	?	830	1953	B.C./CAN.	I.of D.	PROVINCE
41	PENTLEDGE 2	CONOX	PUNTLEDGE R.	B.P.	N/A	0.20	N/A	1.5:1	?	1972	BAND	?	BAND
42	PETERS 1	PETERS	FRASER	DYKE	0.25	N/A	?	?	125	1988	BAND	?	BAND
43	PETERS 2	PETERS	FRASER R.	B.P.	N/A	1.07	N/A	2:1	48	1988	BAND	?	BAND
44	PINCHIE 2	TL'AZT'EN NATION	STUART L./PINCHI R.	B.P.	N/A	0.10	N/A	2.5:1	30	1988	BAND	?	BAND
45	PORT SIMPSON 1	LAX KW'ALAAMS	SEA	CAUSEWAY	N/A	0.13	?	1:1	?	1990	BAND	?	BAND
46	QUAAOUT 1	LITTLE SHUSWAP	LITTLE R./ SHUSWAP L.	B.P.	N/A	0.13	N/A	?	?	1975	BAND	?	BAND
47	RUBY CREEK 2	SKAWAHLOOK	RUBY CREEK	DYKE	?	N/A	?	?	1.2	?	BAND	?	BAND
48	SALMON RIVER 1	SPALLUMCHEEN	SALMON R.	B.P.	N/A	0.19	N/A	1.5:1	?	1984	BAND	?	BAND
49	SCOWLITZ 1	SCOWLITZ 1	FRASER R./HARRISON R.	DYKE	2.90	N/A	3.6	2.5:1	93	1972	FRJP	I.of D.	KENT DIST.
50	SEABIRD ISLAND	SEABIRD ISLAND	FRASER R.	B.P.	N/A	1.90	N/A	2:1	166	1976/82	FRJP/BAND	I.of D.	KENT DIST./BAND
51	SEAICHEM 10	SQUANISH	SQUANISH R.	DYKE	0.60	N/A	3.6	2.5:1	4	1982	B.C./KVR.	I.of D.	SQUANISH DIST.
52	SECHELT 2	SECHELT	SEA	B.P.	N/A	0.85	N/A	1.5:1	?	1984	BAND	?	BAND
53	SEYMOUR CREEK 2	SQUANISH	SEYMOUR CR.	B.P.	N/A	?	N/A	?	1	?	LESEE	?	?
54	SKAWALOOK 1	SKAWELOOK	FRASER R.	B.P.	N/A	0.12	N/A	?	?	?	?	?	BAND
55	SKWEAHM 10	LAKAHAHMEN	KICOMEN SLOUGH	DYKE	2.10	N/A	3.0	2:1	23	1949	FYDB	I.of D.	KICOMEN IS.I.DIST
56	SKEMEOSKWARKEN 1,7,9	LOWER SIMILKAMEEN	SIMILKAMEEN R.	DYKE & B.P	7.50	1.50	3.0	2:1	1100	1988	ARDSA	I.of D.	BAND
57	SKIDEGATE 1	SKIDEGATE	SEA	B.P.	N/A	0.10	N/A	?	?	1985	BAND	?	BAND
58	SKWAIAPEM 10	SEMAS	FRASER R.	DYKE	4.20	N/A	3.6	2.5:1	488	1949	FYDB	I.of D.	KICOMEN IS.I.DIST
59	SKWAY 3	SKWAH	FRASER R.	DYKE	2.50	N/A	3.0	2:1	4	1950	FYDB	I.of D.	CHILLIWACK DIST.
60	SKWAY 4,5	SKWAH	FRASER R.	DYKE	*	N/A	*	*	*	1950	FYDB	I.OF D.	?
61	SLOSH 1	SETON LAKE	SETON R./SETON L.	B.P.	N/A	0.01	N/A	1.5-2:1	?	1990	BAND	?	?
62	SOOWAHLIE 14	SOOWAHLIE	CHILLIWACK R.	DYKE	2.01	N/A	3.7	2:1	?	1990	BAND	?	BAND
63	SWITSEMALPH 8	ADAMS LAKE	SHUSWAP L./SYPHON CR.	DYKE	?	N/A	?	?	?	?	LESEE	?	?
64	TSAWWASSEN	TSAWWASSEN	SEA	DYKE	2.50	N/A	3.6	2.5:1	273	1985	FRJP	I.of D.	CORP. OF DELTA
65	TSEATAH 2	CHEAM	FRASER R.	DYKE & B.P	2.60	0.76	3.0	2:1	97	1973	FRJP/BAND	I.of D.	KENT DIST./BAND
66	TSULQUATE 4	GWA-SALA-NAKWAX	SEA/TSULQUATE R.	B.P.	N/A	0.20	N/A	?	?	1971	BAND	?	BAND
67	VALYAHUN 14	SQUANISH	SQUANISH R.	DYKE	*	N/A	*	*	*	1977	B.C./KVR.	I.OF D.	SQUANISH DIST.
68	WHISPERING PINES 4	WHISPERING PINES	NORTH THOMPSON R.	DYKE	?	N/A	?	?	?	PRE-72	PREV.OWNER	?	?
69	ZAITSCHULLACH 9	LAKAHAHMEN	KICOMEN SLOUGH	DYKE	0.70	N/A	3.0	2:1	20	1949	FYDB	I.of D.	KICOMEN IS.I.DIST
				TOTALS	57.65	13.17							

DYKE CATEGORIES: A - 1:200 yr. Flood + 0.6 M Freeboard
B - 1:200 yr. Flood, no Freeboard
C - Less than 1:200 yr. Flood or unknown

* -See Column Y COMMENTS

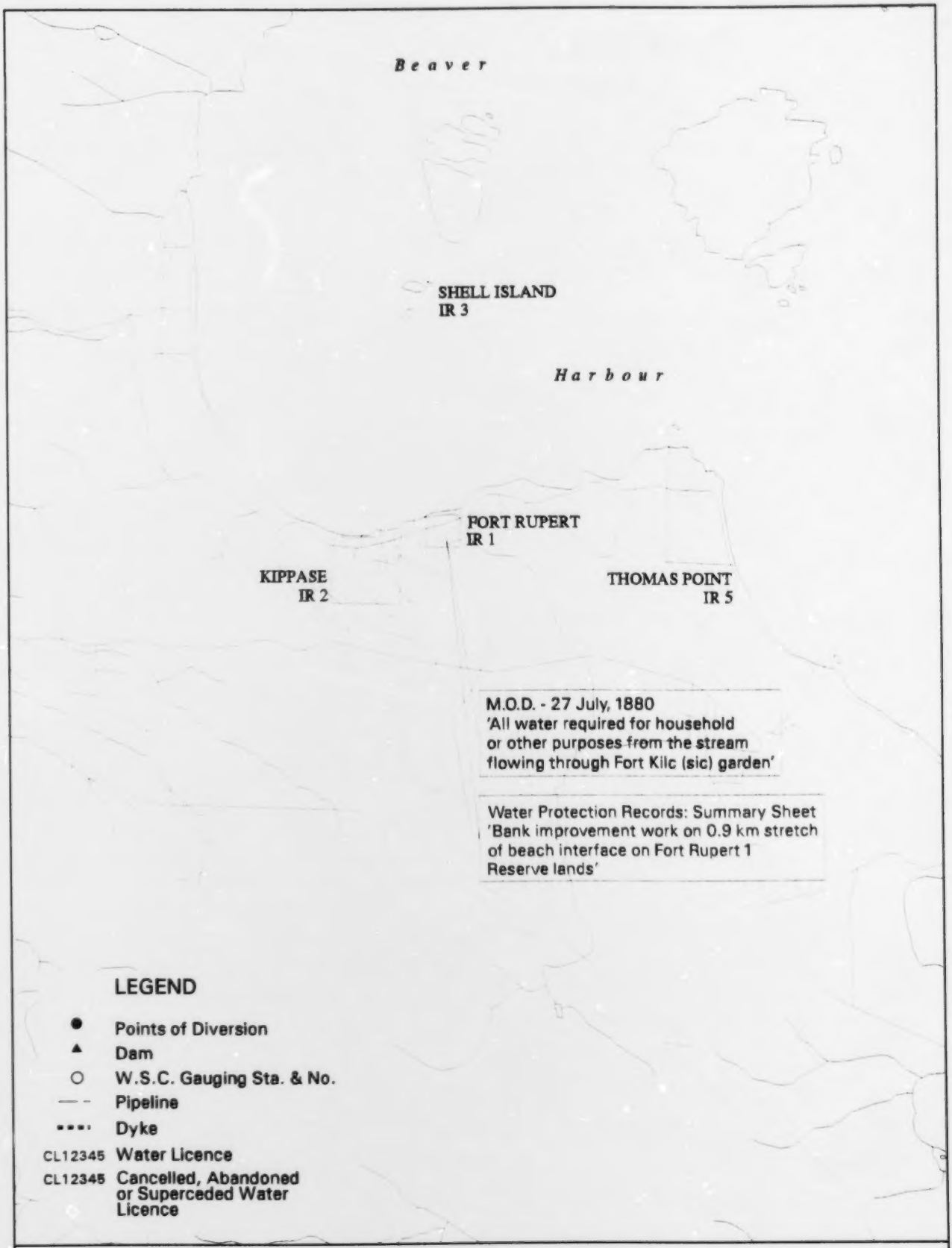
Kwakiutl

Scale 1:125,000

Ministry of Environment, Lands & Parks

Date: April 26, 2000

Environment & Lands Division



Beaver Harbour

Scale 1:30,000

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